

Message Text

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PAGE 01 STATE 007825

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ORIGIN L-02

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TO AMEMBASSY DACCA IMMEDIATE

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E.O. 11652: N/A

TAGS: EINV, BG

SUBJECT: OPIC AGREEMENT

- - -

REF: DACCA 198

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1. MUSTAFA'S PROPOSAL IS MOST ENCOURAGING.

2. IF POSSIBLE WE DESIRE SLIGHT MODIFICATION OF PROPOSED FORMULATION.

A. GOVERNMENTAL NEGOTIATION PERIOD PRIOR TO RECOURSE TO ARBITRATION NORMALLY LESS THAN 12 MONTHS TO AVOID UNNECESSARILY PROTRACTED NEGOTIATIONS. WE WOULD SUGGEST PERIOD BE CHANGED TO 6 MONTHS.

B. ALSO ARBITRATION PROVISIONS NORMALLY CONTAIN MECHANISM FOR APPOINTMENT OF ARBITRATOR BY THIRD PARTY IN EVENT PARTIES UNABLE AGREE UPON MUTUALLY ACCEPTABLE ARBITRATOR. ACCORDINGLY, WE SUGGEST ADDITION OF FOLLOWING SENTENCE AS PENULTIMATE SENTENCE:

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"IF THE TWO GOVERNMENTS ARE UNABLE TO SELECT A MUTUALLY
ACCEPTABLE ARBITRATOR WITHIN 3 MONTHS AFTER INDICATION BY
EITHER GOVERNMENT OF ITS DESIRE FOR ARBITRATION FOLLOWING

EXPIRATION OF THE ABOVE NEGOTIATING PERIOD, EITHER
GOVERNMENT MAY REQUEST THE PRESIDENT OF THE INTERNATIONAL
COURT OF JUSTICE TO DESIGNATE AN ARBITRATOR WHOSE
DECISION SHALL BE FINAL."

3. WE VIEW THE PROVISION FOR APPOINTMENT OF ARBITRATOR
AS SIGNIFICANTLY MORE IMPORTANT THAN REDUCTION OF NEGO-
TIATING PERIOD. EMBASSY AUTHORIZED TO ACCEPT 12 MONTH
NEGOTIATING PERIOD IN RETURN FOR BDG FLEXIBILITY ON
APPOINTMENT MECHANISM. WE DO NOT THINK
APPOINTMENT PROVISION SHOULD BE A CONTENTIOUS POINT;
HOWEVER, SHOULD IT BECOME FINAL OBSTACLE TO AGREEMENT, WE
WOULD LIKE OPPORTUNITY TO CONSIDER WHETHER THIS ISSUE
SUFFICIENTLY IMPORTANT TO DELAY SIGNING OF AGREEMENT. KISSINGER

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